

Battle over Private Property Rights

Momentum is building in the battle over private property rights, specifically in the case of the threat of the use of eminent domain to build carbon capture pipelines across the state. The House has passed a bill requiring 90% of the miles of the pipeline be voluntarily signed up to allow an easement to go through before a private company can apply to the Iowa Utilities Board to allow the use of eminent domain to force an easement through the remaining 10%. The bill also allows farmers to claim yield loss damages on crops permanently. While I would have liked to have seen a threshold of 100% for carbon capture pipelines, 90% is certainly a great deal better as currently the law contains no threshold.

Now the bill has come over to the Senate. Having been contacted by numerous landowners and farmers, I, as well as other senators, have spoken to Senate leaders urging them to take up legislation dealing with the CO₂ pipeline to protect landowner and farmer private property rights. It is disappointing and dismaying to see that nothing has been taken up. But the session is not over yet and leaders can still take it up and those of us supporting property rights protections will continue to urge them to do so.

Here is the letter of objection I wrote to the Iowa Utilities Board urging the members to protect our private property rights:

I am writing to register my opposition to the use of eminent domain by Summit Carbon Solutions and Navigator Heartland Greenway to build a carbon capture pipeline.

As a State Senator, I have been contacted by many landowners and farmers, both in my district and all over the state, concerned and opposed to having to deal with a large company wanting the use of their land and wondering how far they will be allowed to go to be successful.

The 5th Amendment to the U.S. Constitution states: “nor shall private property be taken for public use, without just compensation.” The same is echoed by the Iowa Constitution Article 1, Section 18: “Private property shall not be taken for public use without just compensation first being made...”

Iowa Code 479B.9 charges the Iowa Utilities Board saying: “A permit shall not be granted to a pipeline company unless the board determines that the proposed services will promote the public convenience and necessity.”

As a member of the Iowa Utilities Board your responsibility is to ensure that the projects you approve qualify under our constitutions and the law.

I do not believe this carbon pipeline project qualifies under the meaning of these documents. To allow eminent domain to be used in this case, I believe is a violation of our private property rights as expressed in our constitutions and Iowa law.

Eminent domain should not be used for private use projects or economic development, which is also private use. Our constitutions only allow it for public use, such as for highways or public utilities. This carbon capture pipeline is strictly a private use project.

Iowa law says the proposed services must “promote the public convenience and necessity”. It is a huge stretch of the imagination to say that the carbon pipeline project promotes public convenience and necessity because it is needed to fight climate change and therefore it is a public necessity. That is merely an opinion, as man-made climate change is highly debatable and clearly not settled science. Public policy should not be adopted when the underlying science is not fully known or understood. Therefore, the consideration of climate change should not be a factor in deciding whether eminent domain should be used.

One could also say that it is a public necessity to help keep the ethanol industry viable, but that is only speculation and an economic interest. Our constitutions were written specifically to keep economic power from being a factor in deciding whether to use the power of eminent domain. Therefore, the ethanol economic issue does not qualify for consideration regarding the use of eminent domain.

Our federal and state constitutions require a respect for private property rights and provide a defense for landowners against those who are more powerful. The situation landowners in Iowa are in right now is the exact situation in which our constitutions are intended to provide protection. It must be taken into consideration that the individual farmer and landowner have plans for their property and they must be protected against the “plans” the private company has for their property.

Unfortunately, in 2005 the U.S. Supreme Court in a 5-4 decision in *Kelo vs. City of New London* approved the use of eminent domain for private companies to use for economic development and that it qualified as a “public use” under the 5th Amendment. Please do not follow this model as I, as do many others, believe it is incorrect. The dissenting justices warned, *“The beneficiaries (of this decision) are likely to be those citizens with disproportionate influence and power in the political process, including large corporations and development firms. As for the victims, the government now has license to transfer property from those with fewer resources to those with more.”* This result is unfair and violates the clear intent and meaning of our federal and state constitutions as well as Iowa law. However, the court did leave property rights protection in the hands of the state and local governments.

I am urging you as members of the Iowa Utilities Board to uphold and protect the private property rights of landowners and farmers under the U.S. constitution, the Iowa constitution, and Iowa law as you are charged by the Iowa legislature to do.

That’s the end of the letter.

I would encourage everyone to contact their legislator and even legislators not in their area. Private property rights affect every one of us, not just the landowners and farmers who have the misfortune of their land being in the way of the pipeline. If any one of us has his property rights damaged, we all have our property rights damaged. It may not be you today, but it could be you tomorrow. So we all must speak up.

I think we sometimes forget how blessed we are to have a constitutional system of government designed to protect private property rights. I was reminded by another senator that in third world countries that do not have this protection, there is no incentive to own and improve and make your property profitable. That’s because if it is stolen or damaged, the government either won’t protect you or they’ll take it away from you themselves. That country is beset with tyranny and poverty. So a country that doesn’t protect private property rights has neither liberty nor prosperity.

That’s why private property rights was so important to our Founding Fathers: “Property must be secured or liberty cannot exist. The moment the idea is admitted into society that property is not as sacred as the law of

God, and that there is not a force of law and public justice to protect it, anarchy and tyranny commence.”- John Adams.

Bills Ready for Debate

School Investigations: Reforms to prevent schools from quietly shuffling an employee guilty of violating standards of teaching practice (includes sexual abuse of students) from going to another school, as has happened in some schools.

Non-Compete Agreements: Prohibits an employer from requiring a mental health provider from entering into an agreement that limits their practice. Designed to remove barriers from mental health professionals seeking to provide clients service.

Human Trafficking: Raises penalties for human trafficking crimes.

County Compensation Boards: Allows a county to eliminate their county compensation board if they choose. If they do that, the responsibilities are taken over by the board of supervisors.

Midwifery: Allows the licensing of the practice of certified professional midwives.

Feel free to contact me with ideas, thoughts, and concerns. My phone is 319-987-3021 or you can email me at sandy.salmon@legis.iowa.gov . I want to hear what you are thinking and will listen to your input. Together we will work to make a difference for the future of Iowa. Thank you very much for the honor of representing you!

Sincerely,

Sandy